IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 517 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI RANCHHODBHAI MAKWANA

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner

Mr K G Sheth, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/04/2001

ORAL JUDGEMENT

The petitioner-original complainant has preferred this revision application under section 397 of the Criminal Procedure Code, 1973 challenging the judgment and acquittal order dated 30.8.2000 recorded by the learned Addl.Sessions Judge of the City Sessions Court,

Court No. 15, Ahmedabad in Criminal Appeal No.59/99 under which the learned Addl.Sessions Judge allowed the said appeal of contesting respondent no.2 herein and set aside the judgment and conviction order recorded by the learned Metropolitan Magistrate in Criminal Case No.2058/97 and directed that the fine be refunded to respondent no.2 herein. The present petitioner had filed criminal case no.2058/97 on 7.10.1997 against respondent no.2 herein for offence punishable under section 138 of the Negotiable Instrument Act, 1881 (for short, 'the Act') After registering the complaint and after hearing the evidence, the learned Metropolitan Magistrate found that the second respondent herein was acquitted of offence punishable under Section 138 of the said Act and consequently after hearing him on the point of quantum of punishment, the learned Magistrate, court No.10 convicted the second respondent for offence punishable under section 138 of the said act and directed that he shall undergo simple imprisonment for a period of six months and shall pay fine of Rs.50,000/-. The learned Magistrate further directed that in case of default in payment of fine, the second respondent shall undergo further simple imprisonment for a period of one month.

2. Feeling aggrieved by the said judgment and conviction order dated 13.7.1999, the second respondent herein preferred the aforesaid criminal appeal before the said Sessions Court. After hearing the learned Advocates for the parties and after going through the Records and Proceedings, the learned Addl.Sessions Judge, Court no.15 allowed the appeal of the second respondent, set aside the judgment and order of the learned Magistrate in criminal case no.2058/97 and directed refund of fine paid by the second respondent. Feeling aggrieved by the said judgment and acquittal order passed by the learned Addl.Sessions Judge, the petitioner-original complaint has preferred this Revision Application before this Court. It has been mainly contended here by the petitioner above named that the learned Addl.Sessions Judge has committed serious illegality in holding that the second respondent has not committed any offence. That the judgment and order of the learned Addl.Sessions Judge are against the evidence on record and the learned Addl.Sessions Judge has not appreciated the object of the Negotiable Instrument Act. That the learned Addl.Sessions Judge has erred in appreciating the evidence on record. That the learned Addl.Sessions Judge has erred in not appreciating the fact that the Banakhat in question was executed by Bhikhabhai Motiram i.e. respondent no.2 herein and the said cheque was also given by him. That once the cheque was issued and it was

returned for want of payment, then the second respondent was responsible and liable for the said dishonour of the said cheque under the provisions of section 138 of the said Act. That the learned Addl.Sessions Judge has failed to appreciate the said aspect of the case. That the learned Addl.Sessions Judge has failed to appreciate the evidence of Jivubhai Jethabhai at Exh.3 in which there is a mention of 'hawala' to the second respondent and the second respondent is entitled to Rs.1,07,000/-, out of which 50,000/- was given to the present petitioner and for the remaining amount the second respondent had given cheque which was returned for non-payment. That the learned Addl.Sessions Judge has committed error in holding that there was no direct transaction between the petitioner and respondent no.2. That this finding has been recorded by him against the evidence on record. That the learned Addl.Sessions Judge has failed to appreciate the evidence at Exhs. 13, 14, 15 and 16 which are the Banakhat, Power of Attorney, Legal notices and original documentary evidence are not in favour of respondent no.2 which establishes that there was agreement to sale between the parties more particularly as per the deposition of Jivubhai Jethabhai at Exh.3. That the learned Addl.Sessions Judge has failed to appreciate the registered agreement to sale which was filed at Exh.15 as well as xerox copies of the documents which are on record. That even otherwise the judgment and order of the learned Sessions Judge are illegal and improper and deserve to be set aside. The petitioner has, therefore, prayed that the present petition be allowed, the judgment and acquittal order of the learned Sessions Judge be set aside and the judgment and conviction order recorded by the learned Metropolitan Magistrate referred to hereinabove be restored.

3. After filing the present Revision Application, the learned Advocate for the petitioner has sought for adjournment, time and again, and the matter has been fixed today. However, the matter was called out by this court on four occasions in the first session but the learned advocate for the petitioner was not present on any of the aforesaid calls. Even in the second sitting, after 2.15 the matter was called out time and again yet the learned Advocate for the petitioner has not responded to the said calls. Therefore, this court did not have the benefit of hearing the learned Advocate for the petitioner in order to appreciate the contentions raised in the memo of the Revision Application by the present petitioner. Therefore, there was no alternative but to hear the learned APP Mr K G Sheth on behalf of the State. Mr. Sheth has taken me through the judgment of the

learned Addl.Sessions Judge. He has also taken me through the judgment of the learned Metropolitan Magistrate. On going through the said judgments, learned APP was not in a position to support the present petition and it was his argument that the learned Addl.Sessions Judge was right in allowing the appeal and in acquitting present respondent no.2. On going through the judgment of learned Addl.Sessions judge, it is very clear that the learned Sessions Judge has recorded finding of fact that the complainant has denied a suggestion but when he was shown Banakhat at Exh.15, he has admitted that he has executed the Banakhat in favour of Bhikhabhai Motibhai, who was not accused before the trial court nor he was party before the Sessions Court nor here. The learned Sessions Judge has also observed that in spite of such facts on record, the complainant who is the petitioner before this court has denied any transaction with the accused and also receipt of the amount of Rs.143,000/under the said Banakhat at Exh.15. The learned Sessions Judge has recorded finding that therefore there is no privity of the contract between the complainant and accused and therefore, the version as put by the accused to the effect that the complainant has sold the land to other persons stands proved and also finds support from the evidence of the complainant himself.

4. On going through the judgment of the two courts below, it is not possible to take a view different from the view recorded by the learned Sessions Judge about the privity of contract as aforesaid. The learned Sessions Judge has also recorded a finding that there was no debt in respect of the cheque which is said to have been issued by respondent no.2. Here also the learned Sessions Judge has recorded a finding at page 18 that there is no transaction inter-say between the accused and the complainant and the land in question must have been sold to somebody else and not to the accused. That in that situation, it cannot be said that there existed any present, past or future liability and and legally enforceable debt against the accused. Therefore, the learned Sessions Judge has recorded a finding that firstly there is no privity of contract between the accused and the complainant and he has also recorded a finding of fact that there was no existing or future liability of debt on the shoulder of the second respondent and, therefore, the ingredients of section 138 of the Act did not stand proved. Any way, the functions, powers and jurisdiction of this Court of Revision are very limited in revision matters.

5. It is well settled that even when the court hears an acquittal appeal, the power of the Court hearing the acquittal appeal is very limited. It has also been settled that the appellate court hearing the acquittal appeal should be slow and reluctant to interfere with the acquittal judgment unless it is perverse and imminently opposed to the evidence on record. This has been laid down in case of State of Gujarat vs. Mansukhlal Chokshi reported in 1993 (2) GLH 849. Therefore, when it is stated that a court of appeal hearing acquittal appeal should be slow, then it can be added that a court hearing revision against the judgment and acquittal order of a lower court has to be slower in exercise of powers, functions and jurisdiction. The petitioner is also required to show that there was unreasonableness in the appreciation of evidence of the trial court as laid down in the case of State of Gujarat reported in the case of Ishwarlal Khumchand Shah, reported in 1993 (1) GCD 761. It is well settled that when two views are possible, as a matter of judicial caution, the High Court would refrain from interfering with the order of acquittal as the trial court had a chance of seeing the witness giving deposition from the witness box. It is also well settled that when the appellate court agrees with the logic of and reasoning of the trial court and confirm the same. It does not require to give detailed and lengthy rulings as said in the case (1993 (1) GCD 761) (supra). Again it is well settled that reappreciation of evidence in Criminal Revision is ordinarily not permitted unless very strong case is made out and it is shown that findings recorded are perverse i.e. totally against the evidence on record. That re-appreciation of evidence cannot be done simply because the Court thinks that the lower court has taken an erroneous view in recording a finding. This can be gathered from the case of Ramaben Patel v. State of Gujarat, reported in 1992 (2) GLR 1530. Even in the case of Kantilal Chavda v. Nanubhai Chavda, reported in 1992 (2) GLH 1520, it has been observed at length that revisional powers are not appellate powers. Such powers can be exercised for giving justice and not for injustice, even if the order sought to be revised is not in confirmity with law.

6. With the aforesaid facts and circumstances, it cannot be said that the petitioner has made out strong case as reflected in the judgments and acquittal order recorded by the learned Addl.Sessions Judge. In the case of Bansilal v Laxman Singh, reported in AIR 1986 SC 1721, it has been again observed that it is only the glaring cases of injustice resulting from some violation of fundamental principles of law by the trial court, that

the High Court is empowered to set aside the order of the acquittal and direct a retrial of the acquitted accused. This decision also supports the above.

7. In view of the aforesaid, I find that there is no merit in this revision application and it deserves to be dismissed. The Criminal Revision Application is accordingly dismissed.

16.4.2001 [D P Buch, J.]
msp